

1 ROD M. FLIEGEL, Bar No. 168289
MICHAEL G. PEDHIRNEY, Bar No. 233164
2 LITTLER MENDELSON
A Professional Corporation
3 650 California Street, 20th Floor
San Francisco, CA 94108.2693
4 Telephone: 415.433.1940
Facsimile: 415.399.8490
5 E-mail: rfliegel@littler.com

6 Attorneys for Defendant
MEDIAN TECHNOLOGIES, INC.

7
8 HAL E. WRIGHT, Bar No. 157814
LAW OFFICES OF HAL E. WRIGHT
216 F Street, Suite 116, 20th Floor
9 Davis, CA 95616
Telephone: 530.848.3069
10 Facsimile: 530.309.7449
E-mail: hal.wright@sbcglobal.net

11 Attorneys for Plaintiff
12 MARK MCGRATH

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 MARK MCGRATH, an Individual,
17 Plaintiff,

18 v.

19 MEDIAN TECHNOLOGIES, INC., a
Delaware Corporation; FREDERICK
20 BRAG, in his individual capacity and in
his capacity as CEO of Median
21 Technologies, Inc.; GERARD MILHIET,
in his individual capacity and in his
22 capacity as Chief Operations Officer of
Median Technologies; MICHAEL
23 AUFFRET, in his individual capacity
and in his capacity as a Product
24 Manager for Median Technologies; and
DOES 1-50,

25 Defendants.
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Case No. C 06 4429 VRW

**STIPULATED CONFIDENTIALITY
AGREEMENT AND ORDER**

Judge: The Honorable Vaughn R.
Walker

1 1. **INFORMATION.** As used in this order, “Information” is defined
 2 to mean “(1) documents, discovery responses, deposition transcripts, deposition
 3 videotapes, and other material produced or exchanged in the course of this case;
 4 (2) any copies, notes, abstracts, or summaries of material produced or exchanged
 5 in the course of this case; and (3) any pleading, motion, brief, declaration,
 6 transcript, or filing containing such information.” Nothing in this order concerns
 7 the disclosure or use of information by any party or non-party to its employees,
 8 officers, agents and directors if such disclosure or use is made in the ordinary
 9 course of business unrelated to this litigation.

10 2. **THREE CATEGORIES OF CONFIDENTIAL INFORMATION.**
 11 There are three categories of confidential information:

12 (a) CONFIDENTIAL. This Information must meet the
 13 standards stated in paragraph 3.

14 (b) CONFIDENTIAL—TO BE FILED UNDER SEAL. This
 15 Information must meet the standards in paragraph 3 and the designating party
 16 must consider that the Information also meets the standards established by
 17 U.S.D.C. N.D. Local Rule 79-5.

18 (c) ATTORNEYS’ EYES ONLY. This Information must meet
 19 the above standards and the designating party must also reasonably consider that
 20 the Information meets the definition of “Trade Secret” in California Evidence Code
 21 section 1061(a)(1) and contains confidential, proprietary information, including
 22 but not limited to marketing, cost, pricing, salary, market share, or revenue and
 23 income information.

24 3. **CONFIDENTIAL INFORMATION.** Any party or non-party may
 25 designate as “CONFIDENTIAL” any Information that the party or non-party
 26 considers to contain information involving trade secrets, confidential business or
 27 financial information, or personal information subject to protection under
 28 California law. Confidential information includes the names, addresses, telephone

1 numbers, social security numbers, and other personal identifying information of
 2 persons who are not named parties in this action. Where a piece of Information
 3 consists of more than one page, the first page and each page on which confidential
 4 information appears must be so clearly and conspicuously designated.

5 **4. DESIGNATION OF INFORMATION AS CONFIDENTIAL.**

6 (a) A party or non-party producing Information may designate
 7 the Information as "CONFIDENTIAL," "CONFIDENTIAL—TO BE FILED UNDER
 8 SEAL," and/or "ATTORNEYS' EYES ONLY" by so indicating in the relevant
 9 discovery responses or on the record at the deposition and requesting the
 10 preparation of a separate transcript of the material.

11 (b) A party or non-party receiving Information may designate
 12 the Information as "CONFIDENTIAL," "CONFIDENTIAL—TO BE FILED UNDER
 13 SEAL" and/or "ATTORNEYS' EYES ONLY" by stating in writing the specific pages
 14 of the Information to be designated within twenty (20) calendar days after receipt
 15 of the Information for which the designation is proposed.

16 (c) After any designation made according to the procedure set
 17 forth in this paragraph, the designated Information must be treated according to
 18 the designation until the matter is resolved according to the procedures described
 19 in paragraph 6 below.

20 **5. ALL CONFIDENTIAL INFORMATION TO BE USED ONLY FOR**
 21 **THIS CASE.** All Confidential Information (other than Information that is publicly
 22 available) must be used by the party to whom the Information is produced solely
 23 and exclusively for the purpose of this case.

24 **6. CHALLENGE TO DESIGNATION.** If a party contends that any
 25 Information is not entitled to confidential treatment, such party must promptly
 26 provide written notice so stating to the party or non-party who designated the
 27 Information as confidential. The party or non-party who designated the
 28 Information as confidential has sixty (60) calendar days from the receipt of such

1 written notice to apply to the Court for an order designating the Information as
2 confidential.

3 7. **TREATMENT OF INFORMATION WHILE CHALLENGE IS**
4 **PENDING.** Notwithstanding any challenge to the designation of Information as
5 Confidential Information, all documents designated as such must be treated as
6 such and are subject to this order unless and until one of the following occurs:

7 (a) the party or non-party who claims that the Information is
8 Confidential Information withdraws such designation in writing; or

9 (b) the party or non-party who claims that the Information is
10 Confidential Information fails to apply to the Court for an order designating the
11 Information confidential within the time period specified above after receipt of a
12 written challenge to such designation; or

13 (c) the Court decides the Information is not Confidential
14 Information and all appeals from that have ruling been exhausted.

15 8. **LIMITATION ON DISCLOSURE OF CONFIDENTIAL**
16 **INFORMATION.** Except with the prior written consent of the other parties, or
17 upon prior order of this Court obtained upon notice to opposing counsel,
18 information designated as "CONFIDENTIAL" or "CONFIDENTIAL—TO BE FILED
19 UNDER SEAL" must not be disclosed to any person other than:

20 (a) the Court and court personnel;

21 (b) the court reporter and videographer (if any) present at any
22 hearing, deposition or trial;

23 (c) counsel for the respective parties to this litigation,
24 including in-house counsel, co-counsel retained for this litigation, and the
25 employees of counsel;

26 (d) persons who authored or prepared the Information;

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1 (e) the named parties to this litigation, including individual
2 defendants, and any officer or employee of a party, to the extent deemed necessary
3 by counsel for the prosecution or defense of this litigation;

4 (f) percipient witnesses (other than expert witnesses and
5 consultants). A witness must sign the Certification annexed hereto before being
6 shown or otherwise informed of any Confidential Information. Confidential
7 Information may be disclosed to a witness who will not sign the Certification only
8 in a deposition at which the party who designated the Confidential Information is
9 represented or has been given notice that Confidential Information produced by
10 the party may be used. At the request of any party, the portion of the deposition
11 transcript involving the Confidential Information must be designated
12 "Confidential" pursuant to paragraph 4 above. Witnesses shown Confidential
13 Information are not allowed to retain copies.

14 (g) consultants or expert witnesses retained for the
15 prosecution or defense of this litigation, provided that if Plaintiffs select a
16 consultant or expert employed by one of Defendant's competitors, Plaintiffs must
17 notify Defendant no less than 10 calendar days before disclosing any Confidential
18 Information to that individual and must afford Defendant a reasonable
19 opportunity to move for a protective order preventing or limiting such disclosure.

20 (h) Counsel representing clients asserting similar claims
21 against the same defendants, provided that before disclosing any Confidential
22 Information to any such counsel, the disclosing party must notify the opposing
23 party, or designating non-party, 10 calendar days before disclosing any
24 Confidential Information to that individual and must give the opposing party or
25 non-party a reasonable opportunity to move for a protective order preventing or
26 limiting such disclosure.

1 9. **LIMITATION ON DISCLOSURE OF ATTORNEYS' EYES ONLY**
 2 **INFORMATION.** Except with the prior written consent of the other parties, or
 3 upon prior order of this Court obtained upon notice to opposing counsel,
 4 information designated as "ATTORNEYS' EYES ONLY" must not be disclosed to
 5 any person other than:

- 6 (a) the Court and court personnel;
- 7 (b) the court reporter and videographer (if any) present at any
 8 hearing, deposition, or trial;
- 9 (c) counsel for the respective parties to this litigation, co-
 10 counsel retained for this litigation, and the employees of counsel;
- 11 (d) persons who authored or prepared the Information;
- 12 (e) consultants or expert witnesses retained for the
 13 prosecution or defense of this litigation, provided that if Plaintiff chooses a
 14 consultant or expert employed by Defendant or one of its competitors, Plaintiff
 15 must notify Defendant, or designating non-party, 10 calendar days before
 16 disclosing any Confidential Information to that individual and must give
 17 Defendant an opportunity to move for a protective order preventing or limiting
 18 such disclosure.

19 10. **CERTIFICATION FORM.** Except for persons identified in
 20 paragraphs 8(a), (b), (c), and (d) and 9(a), (b), (c) and (d), each person who is
 21 authorized by this order to inspect or have access to Information designated as
 22 "CONFIDENTIAL" or "CONFIDENTIAL—TO BE FILED UNDER SEAL" and who in
 23 fact inspects any such Information must, before conducting the inspection or
 24 having the access, must execute the Certificate attached to this order and thereby
 25 agree to be bound by its provisions. The Certification forms must be retained by
 26 counsel to the party that disclosed the Confidential Information during the
 27 pendency of the action and for a period of five years after the conclusion of the
 28 action as defined in paragraph 17 below. The Certification forms need not be

disclosed to opposing counsel, but opposing counsel may apply to the Court for an order compelling disclosure.

11. LIMITATION ON USE OF CONFIDENTIAL INFORMATION.

Persons receiving Information designated as "CONFIDENTIAL," "CONFIDENTIAL—TO BE FILED UNDER SEAL," or "ATTORNEYS' EYES ONLY" must not reveal or discuss that information to or with any person who is not entitled to receive the information, except as set forth in this order.

12. WAIVER OF CONFIDENTIAL DESIGNATION.

Any party or non-party may voluntarily disclose to others without restriction any Information designated by that party or non-party as "CONFIDENTIAL," "CONFIDENTIAL—TO BE FILED UNDER SEAL," or "ATTORNEYS' EYES ONLY."

13. FILING UNDER SEAL—DISCOVERY MOTIONS.

When filing or opposing a motion for discovery, counsel must file under seal any Information designated as "CONFIDENTIAL—TO BE FILED UNDER SEAL" as well as any materials setting forth the substance of that Information. Compliance with U.S.D.C. Local Rule 79-5 shall be made.

14. FILING UNDER SEAL—MOTIONS OTHER THAN DISCOVERY.

When filing or opposing a motion related to matters other than discovery (a "Substantive Motion"), counsel must comply with Local Rule 79-5 with regard to filing under seal any Information designated as "CONFIDENTIAL—TO BE FILED UNDER SEAL" as well as any materials setting forth the substance of that Information.

15. EFFECT OF SEALING.

If Information or materials setting forth the substance of that Information are placed under seal by the Court, then the sealed Information and material is not to be opened or the contents revealed, except by Order of the Court or agreement of the party, person, or entity who designated the Information as "CONFIDENTIAL—TO BE FILED UNDER SEAL."

1 16. **COPIES OF CONFIDENTIAL INFORMATION.** This order does
2 not restrict a person who is properly in the possession of Confidential Information
3 from (1) making working copies, abstracts, digests, and analyses of Confidential
4 Information for use in connection with this litigation, or (2) converting or
5 translating Confidential Information into machine readable form for incorporation
6 in a data retrieval system used in connection with this litigation. Any such copies,
7 abstracts, digests, analyses or data compilations have the same level of protection
8 under the terms of this order as the Information from which they are derived.

9 17. **CONCLUSION OF LITIGATION.** The Conclusion of this action
10 is defined as 30 days after the expiration of the time to appeal or challenge any
11 final judgment, settlement or consent decree. All provisions of this order
12 restricting the communication or use of Confidential Information continue to be
13 binding after the conclusion of this action, unless otherwise agreed or ordered.
14 Upon conclusion of this action, a party who received Confidential Information in
15 the context of this action, other than that which is contained in pleadings,
16 correspondence and deposition transcripts, must either (a) return such
17 documents no later than 30 calendar days after conclusion of this action to
18 counsel for the party or non-party who provided such information, or (b) destroy
19 such documents within the time period upon prior, written consent of the party
20 who provided the information and certify in writing within 30 calendar days that
21 the documents have been destroyed.

22 18. **USE OF INFORMATION AT TRIAL.** This Order does not
23 preclude, limit, restrict or otherwise apply to the use of Information at trial.
24 However, the parties agree to meet and confer in advance of trial to discuss
25 anticipated issues, if any, regarding the use of confidential Information at trial.

26 19. **APPLICABILITY OF PRIVILEGES AND PROTECTIONS.**
27 Nothing in this order waives any applicable privilege or work product protection,
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1 or affects the ability of a party to seek relief for an inadvertent disclosure of
2 material protected by privilege or work product protection.

3 **20. EXTENSION TO NON-PARTIES.** Any witness or other person,
4 firm or entity from which discovery is sought may be informed of and may obtain
5 the protection of this order by written advice to the parties' respective counsel or
6 by oral advice at the time of any deposition or similar proceeding.

7 **21. VIOLATIONS.** A party has recourse for violations of this order
8 by way of a motion after notice to the opposing party or other offender and a
9 reasonable opportunity to cure. The procedures for said motions shall be the
10 same as the procedures set forth above for motions to seal.

11 IT IS SO STIPULATED.

12 Dated: November 27, 2006



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15 ROD M. FLIEGEL
16 LITTLER MENDELSON
17 A Professional Corporation
Attorneys for Defendant
MEDIAN TECHNOLOGIES, INC.

18 Dated: November 27, 2006



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20 HAL E. WRIGHT
21 LAW OFFICES OF HAL E. WRIGHT
22 Attorneys for Plaintiff
23 MARK MCGRATH

24 IT IS SO ORDERED.

25 Dated: March 15, 2007

26 DATED: _____, 2006



27 THE HONORABLE VAUGHN R. WALKER
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